

### REMARKS

Claims 1-20 are in this application and are presented for consideration. By this amendment, Applicant has amended claims 1 and 8. New claims 12-20 have been added. Applicant wishes to bring to the Examiner's attention that the corresponding European application EP 1 718 239 B1, which includes the claims as now presented, has been allowed. Applicant has attached a copy of the corresponding European application EP 1 718 239 B1.

Claims 1-11 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite.

Applicant has amended the claims paying close attention to the Examiner's remarks. With respect to claim 10, it is clearly provided that two basic structures are provided. It is Applicant's position that the claims as now presented are clear and fully comply with the requirements of the statute.

Claims 1-6 and 9-11 have been rejected under 35 U.S.C. 102(b) as anticipated by Das (US 5,334,217) or, in the alternative, under 35 U.S.C. 103(a) as obvious over Das in view of Evard et al. (US 6,616,675).

Applicant has amended the independent claims to clarify that the concertina pleats are fixed only approximately centrally with respect to a direction of extension of the basic structure via a fixing arrangement. This advantageously allows the basic structure to be grasped at the central part so that the longitudinal ends can be folded upwards to form a plug-type insert that can be pushed into a hernia defect with the central portion as a leading point as shown in the attached drawing, which has been attached for explanatory purposes only. The prior art as a

whole fails to teach and fails to suggest such an implantable prosthesis and the advantages associated with such an implantable prosthesis.

Das fails to teach and fails to suggest an implantable prosthesis comprising a round to oval blank of a layer material having concertina pleats wherein the concertina pleats are fixed in a central region of the blank via a fixing arrangement as claimed. Das merely discloses a septal defect closure device that is made of two membranes 22, 32 that are tightened by a frame 24, 34 and interconnected at a central portion. However, the membranes 22, 32 of Das do not have concertina pleats or any basic structure that is made of one blank of meshed layer material that has an hourglass-shape in plan view. Although Figure 3 of Das may show a side elevation that is in the shape of an hourglass, this construction has nothing to do with the present invention since there are no concertina pleats present. Compared with Das, the concertina pleats of the present invention are fixed approximately centrally with respect to a direction of extension of a blank of meshed layer material via a fixing arrangement. This advantageously allows a user to grasp the blank of material in an area adjacent to the fixing arrangement so that this region is lead first into the hernia defect so that the concertina pleats fold as the leading fixing arrangement region is lead into the hernia defect. Das fails to be directed to the problems associated with placement of an implantable prosthesis in a hernia defect as featured in the present invention. As such, a person of ordinary skill in the art would not be directed toward the teachings of Das. Even assuming a person of ordinary skill in the art would be directed toward the disclosure of Das, Das does not teach or suggest an implantable prosthesis comprising a round to oval blank of a layer material having concertina pleats wherein the

concertina pleats are fixed in a central region of the blank to provide the blank with an hourglass shape as claimed. As such, the prior art as a whole takes a completely different approach and fails to teach or suggest important features of the claimed combination.

A person of ordinary skill in the art would not be directed toward the teachings of Evard et al. as Evard et al. does not provide any teaching or suggestion for an implantable prosthesis for a hernia defect as featured in the present invention. Evard et al. only directs a person of ordinary skill in the art toward a structure for connecting blood vessels. This provides no teaching and no suggestion for the problems associated with arranging an implantable prosthesis in a hernia defect as featured in the present invention. Even assuming a person of ordinary skill in the art would be directed toward the teachings of Evard et al., Evard et al. fails to provide any teaching or suggestion for an implantable prosthesis comprising a round to oval blank of a layer material having concertina pleats wherein the concertina pleats are fixed in a central region of the blank via a fixing arrangement as claimed. Evard et al. merely discloses that the structure for connecting blood vessels may have a portion with an accordion configuration. However, the structure for connecting bloods vessels of Evard et al. does not have any concertina pleats that are fixed in a central region of the structure as featured in the present invention. In contrast to Evard et al., the concertina pleats of the present invention are fixed only approximately centrally with respect to a direction of extension of a basic structure via a fixing arrangement. This advantageously allows a user to grasp the basic structure in the area of the fixing arrangement so that the fixing arrangement is lead into the hernia defect so that the concertina pleats are folded upwards to form a plug-

type insert that is pushed into the hernia defect with the central portion as the leading portion into the hernia defect. Evard et al. fails to disclose such an implantable prosthesis for hernia defects since the structure for connecting bloods vessels of Evard et al. does not have any concertina pleats that are fixed in a central region of a basic structure via a fixing arrangement as claimed. As such, the rejection does not establish a prima facie case of obviousness as the prior art as a whole does not teach or suggest important features of the claimed combination. Accordingly, Applicant respectfully requests that the Examiner favorably consider claim 1 as now presented and all claims that depend thereon.

Claims 7 and 8 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Das in view of Evard et al., and further in view of Saadat (US 2003/0018358).

Although Saadat teaches a method for thermally and/or mechanically treating tissue to reconfigure or shrink the tissue in a controlled manner, the references as a whole fail to suggest the combination of features claimed. Specifically, Das, Evard et al. and Saadat provide no suggestion or teaching for an implantable prosthesis comprising a round to oval blank of a layer material having concertina pleats wherein the concertina pleats are fixed in a central region of the blank via a fixing arrangement. As such, the references together do not teach or suggest the combination of features claimed. One of ordinary skill in the art is presented with various concepts, but these concepts do not provide any direction as to combining the features claimed. All claims define over the prior art as a whole.

Applicant has added new claims 12-20. New independent claims 13 and 17 provide for features similar to those found in amended claim 1, but in different claim language. New

dependent claims 12, 14-16 and 18-20 have been added to further clarify the features of the invention. Applicant respectfully requests that the Examiner favorably consider new claims 12-20.

Favorable consideration on the merits is requested.

Respectfully submitted  
for Applicant,

A handwritten signature in black ink, appearing to read 'J. McGlew', with a stylized flourish at the end.

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Attached: Copy of EP 1 718 239 B1  
Copy of Drawing for Explanatory Purposes Only  
Petition for Two Month Extension of Time

JJM:BMD  
72329-7

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